IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Modiya & Ors. vs. State of Rajasthan
(S.B.Criminal Appeal No.410/83)

Dated:- 28th August, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.S.D.Vyas, for the appellants.
Mr.Rameshwar Dave, Public Prosecutor for the State.

This appeal has been filed by the appellants against the judgment dated 11.11.1983 passed by the learned Sessions Judge, Balotra convicting thereby the accused appellants Modia, Gulab Bharti, Taja, Ruda, Jetha, Ganesha, Gaina, Peera, Pania @ Anna, Kachra, Veerma, Sona, Meharram and Sava and sentencing each of them as under :-

Offence u/s. 447 IPC- Three months Rigorous imprisonment for each of the accused.

Offence u/s. 147 IPC - Two years Rigorous Imprisonment for each of the accused.

Offence u/s 325/149 IPC- Five years Rigorous Imprisonment for each of the accused and a fine of Rs.50/- each, in default whereof, one month's additional Rigorous Imprisonment for each of the accused.

Offence u/s 323/149 IPC - No separate sentence was awarded.

On a verbal report by the complainant Kewala, a First Information Report was lodged with Police Station, Guramalani, district Barmer at 4.30 p.m. On 26th August, 1982 in which he alleged that there is an agricultural field of khasra no.209 measuring 75 bighas situated at Sarhad Mauja Sindhaswa Chauhana . It was alleged that the complainant and his father were cultivating the said agriculture field for past 6 years . On the morning of 25th August, 1982, the complainant, his father Mahadeva, Mala s/o Taga, Pratapa s/o Mahadeva, Rama s/o Mahadeva and Kastura s/o Sona were working on that filed . About 10-11 a.m. when the complainant and his family members were working on the field, suddenly Moda s/o Khuma, Mehrama s/o Khuma, Sava s/o Khuma Meghwal r/o Sindhasava Harniyan, Taga Meghwal r/o Tentrol, Gulab Bharti s/o Taga Bharti, Peera s/o Jagmal, Jetha s/o Jagmal, Veerma s/o Hema Kalbi, Rura s/o Ramdan, Gaina s/o Ramdan Bheel, Ganesha s/o Jetha Jatia, Sona s/o Jetha Jatia, Kachra Jatia r/o Veerva, Anna Jatia, Bhera s/o Narna Kalbi and Dalla s/o Ganesha Jatia all armed with lathis, sword and gun came there . While Bhera s/o Narna Kalbi stayed at the boundary of the field, all others attacked the complainant party and bate them. His father sustained fracture on his hand whereas other family members including him namely; Mala, Pratapa, Rama and Kastura became unconscious. Thereafter the accused persons ran away from the place of occurrence. It was stated that Taga Meghwal had sword, Rura Bheel had gun and all others had lathis. It was thereafter that the complainant took injured in a bullock cart to the hospital at Guramalani and then went to the Police Station to lodge the report.

On the basis of the aforesaid report, First Information Report

was registered u/ss. 147, 148, 447, 325, 307/149 IPC and investigation commenced. Pratapa who was seriously injured succumbed to the injuries at 10 p.m. on the following day. The offence u/s 302 IPC was thereupon added to the already registered First Information Report. On completion of the investigation, challan against the aforesaid accused persons was filed for offences u/ss. 147, 148, 447./149 , 325, 302, 307 IPC . So far as the accused Modia ,Gulab Bharti, Ganesha and Gena are concerend, challan against them was filed for substantive offences u/ss. 302, 323 and 325 IPC. The prosecution examined as many as 23 witnesses in support of its case. Learned trial Court after conclusion of trial convicted the accused appellants for the offences as indicated above. Hence this appeal.

Mr.S.D.Vyas,learned counsel for the appellants has argued that the learned trial Court has committed an error in holding that agriculture field was in possession of the complainant party. He has relied upon the statement of Kishan Lal, Investigating Officer to suggest that possession was with the accused party and therefore according to him the appellants could not be convicted for offence u/s 447 IPC. He has argued that there were number of contradictions in the statements of various prosecution witnesses. He has particularly referred to the statement of P.W. 2 Mahadeva who has stated that all 16 accused came and sat near them. They drank water and smoke `beedi' and it was thereafter they suddenly got up and attacked them. Whereas, P.W. 7 Kistura had stated that the accused persons suddenly came there and at once started beating the complainant party. Learned counsel has also argued that it was a free fight in which members of the accused party also sustained

injuries. A criminal case was registered against the complainant party at the instance of Jetha vide FIR No.42/82 with the same police station but the investigating agency filed Final Report in that case. It was thereafter that they filed a complaint in the Court of Munsif and Judicial Magistrate, Barmer, a copy of which has been produced as Ex.D/16. It has been argued that there was unexplained delay in filing of the First Information Report. Entire prosecution story has been concocted and the FIR lodged was result of afterthought. He has argued that all the prosecution witnesses are related to each other and they all were interested witnesses. The prosecution has not produced any independent witness and no farmer from adjoining fields has been produced as a witness. Even the prosecution witnesses have not fully supported the prosecution case in which the motbir witnesses to recovery have also not supported the prosecution case. It has therefore been argued that the learned trial Court has wrongly recorded the conviction of the accused appellants. The impugned judgment is therefore liable to be set aside and the appellants deserves to be acquitted.

On the other hand, Mr.Rameshwar Dave, learned Public Prosecutor has supported the impugned judgment and argued that the accused appellants had mercilessly beaten the members of the complainant party. As a result of which one of the injured Pratapa died on the day of incident itself whereas others have sustained serious injuries. While Pratapa sustained five injuries including grievous injuries on right and left temporal region of his scalp, P.W. 2 Mahadeva received seven injuries which is proved vide Ex. P/64, P.W. 8 Mala sustained eight

injuries which is proved vide Ex.P/67, P.W. 7 Kistura sustained eight injuries as is evident from Ex.P/65. Similarly, injured Kewla received ten injuries which is proved vide Ex.P/66 and P.W. 22 Rama also received one injury. Out of these injured, Mahadva sustained fractures of his right hand and also there was a fracture of his hemrus bone. Learned Public Prosecutor has argued that the agriculture field of the accused Gulab Bharti and Moda Ram was adjacent to the disputed Khasra No. 209 on which the incident had taken place. Khasra no. 209 was in possession of the complainant party. The accused appellants had tress-passed over the agriculture field of the complainant party and mercilessly beaten them. They were therefore aggressor and the law had taken in their own hands. He has taken me through the statements of various prosecution witnesses especially those of P.W. 1 Kewala, P.W. 2 Mahadeva, P.W. 3 Lichhman, P.W. 5 Ridmal, P.W. 6 Tikama, P.W. 7 Kistura and P.W. 8 Mala. Many of them are injured eye witnesses. He has also cited the statements of P.W. 13 Dr. Ranjeetmal Jain and P.W. 23 Dr. Rajendra Singh Mehta for proving the injuries of various injured and post report of the deceased Pratapa. He led stress on the statements of P.W. 3 Lichhman and P.W. 5 Ridmal who are neighbors of the disputed agriculture field to prove that possession over the agriculture field was of the complainant party. He has therefore argued that the learned trial Court was perfectly justified in convicting and sentencing the accused appellants for various offences. The present appeal is therefore liable to be dismissed.

I have given my thoughtful consideration to the arguments of the learned counsel for the parties and perused the record.

In order to decide whether or not the appellants were aggressor who took the law in their own hands and started the fight, it is first necessary to determine the question as to which of the parties was in possession of the agriculture field of Khasra No. 208 with regard to which the parties had quarreled and over which the incident in question has taken place, I shall first examine the findings recorded by the learned trial Court on this question and in doing so, I shall also briefly refer to the evidence available on record.

P.W. 17 Hari Singh, who is patwari and P.W. 22 Kishanlal, the Investigating Officer are witnesses to the site plan Ex.P/30 in which the location of the disputed agriculture field has been shown marked as “A,B,C,D”.

P.W. 1 Kewla , P.W. 2 Mahadeva , P.W. 7 Kistura, P.W. 8 Mala, and P.W. 21 Rama who all are injured witnesses have consistently stated that on the date of incident, the maze crop was standing on the agriculture field.

P.W. 22 Kishanlal who is Investigating Officer has prepared Ex.P/9. This has been proved by P.W. 18 Mod Singh, who is motbir witness. P.W. 3 Lichhman who is the neighbor of the disputed agriculture field has also stated that the land in dispute was in possession and cultivation of Mahadeva, Kistura and Mala of the complainant party and that they were cultivating this land for past eight years. P.W. 5 Ridmal who is another neighbor of the disputed agriculture field has also stated that

the possession of the land in dispute on the date of incident was with the complainant party and that they were cultivating the same for last 4-5 years and on the date of incident, their crop of maze was standing on the field. He has stated that the agriculture land of Gulab Bharti and Jetha of the accused party was situated adjacent to the land in dispute towards its western side. P.W. 17 Hari Singh who is Patwari of the area concerned has stated that he has issued duplicate copy of map Ex.P/30 which pertains to Khasra No. 209 and has prepared the tress map in presence of Investigating Officer Kishanlal. He has also produced the report of the changed khasra(khasra parivartansheel) from Samvat 2039 which is Ex.P/31 and has stated that according to this, the disputed land was measuring 60 bighas and was in cultivatory possession of the complainant party . Similarly, they were also in possession of the same land from Samvat 2039. Thus according to this statement, complainant party was in possession of the land for past four years. P.W. 17 Hari Singh has also stated that adjoining land was in possession of the accused party namely Jetha, Gulab Bharti and Ganesh and they were cultivating the same. He has also stated that the accused persons were also trying to encroach upon and cultivate Khasra no. 209. In this respect, Tehsildar, Gudhamalani had issued to them various notices u/s 91 of the Land Revenue Act, 1956 during the year 1981-82 which have been exhibited as Ex.D/4 to D./10.

It would be evident from the statement of P.W. 17 Hari Singh that while complainant party was in cultivatory possession of 60 bighas of land of khasra no. 209, the accused persons were also at the same time

trying to tress-pass and cultivate this land and there was a dispute between two parties over this land. A critical examination of the evidence in totality clearly prove that possession of the disputed land was with the complainant party on the date of incident. They have been proved to be in cultivatory possession of this land for last at least 4-5 years. It has also been proved that their crop of maze was standing on the land in dispute on the date of the incident. In these circumstances, I do not find any error or fault in the finding recorded by the learned trial Court to the effect that the complainant party was in cultivatory possession of the land in dispute and therefore it can safely be held that the accused had committed offence u/s 447 IPC in tress-passing over the land in dispute and were aggressors having taken the law in their own hands.

Now,I come to the question whether the appellants were guilty of committing the other offences for which they have been charged and convicted.

There are number of injured witnesses who are also by virtue of their presence on the scene of occurrence are eye witnesses of the incident. Their statements more or less provide corroboration to one by another and these witnesses are P.W. 1 Kewala , P.W. 2 Mahadeva, P.W. 7 Kistura and P.W. 8 Mala. All these witnesses have consistently named the appellants herein and have given strikingly similar version of the incident barring from few omissions which in my view cannot be termed as major contradictions or discrepancies.

P.W. 1 Kewala has stated that at about 10-11 a.m. on 25.8.1982 when he himself, his father Mahadeva , brothers Pratapa, Rama ,Kistura and Mala were working in the agriculture field, accused Moda, Sava, Mehram, Taga, Gulab Bharti, Jetha, Peera, Veerma, Bhera, Anna, Kachra, Sona, Dala, Ruda, Gehna and Ganesha total 16 accused came there. While Ruda had a gun, Taga had a sword and remaining accused had lathis in their hands. Moda inflicted a lathi blow on the head of Pratapa whereas Gulab Bharti inflcited a lathi blow on the head of Pratapa , Jetha inflicted a lathi blow on the left side of the head of Pratapa, Gehna inflicted a lathi blow at the back portion of the neck of Pratapa, Ganesha inflicted a lathi blow on the left shoulder of Pratapa. Pratapa fell on the ground. Taga inflicted a lathi blow on the head of complainant. Sava and Mehram both inflicted lathi blows on his head and shoulder.Peera and Ruda both inflicted lathi blow on his father Mahadeva. They also inflicted the injury on the head of Mahadeva. Anna inflicted a lathi blow on the left eye of Kistura Mali and Kachra also inflicted a lathi blow on the upper part of left eye of Kistura. Similarly, Veerma inflicted a lathi blow on the back and legs of Mala. Dala also inflicted a lathi blow at the thighs of Mala whereas Sona inflicted a lathi blow on his head. Accused Gulab Bhari inflicted a lathi blow on the back of Rama. These persons ran away from the scene of incident while Mahadeva and Pratapa lay unconscious. P.W. 1 Kewala further stated that accused persons wanted to dispossess them from the land in dispute. His younger brother Teekma then took Pratapa and Mahadeva in a bullock cart to the Hospital at Gudhamalani. He was admitted to hospital. Mala, Kistura and Rama were also hospitalized. It was at 6 p.m. on that day, he went to the police

station for lodging the report, which is Ex.P/1. This witness has been subjected to very lengthy cross-examination but his testimony has remained unshaken.

P.W. 2 Mahadeva has also given almost similar version of the incident that Taga had sword, Rudia had gun and remaining others had lathis and gedia(a type of lathi having bend at one end). He has named Gulab Bharti, Jetha , Modia, Gehniya Bheel and Ganesha as five persons who inflicted various injuries on the person of Pratapa. When he tried to save Pratapa, accused Peera inflicted a lathi blow on his head and accused Rudia Bheel inflicted another blow on his back. He also became unconscious. He has candidly stated that accused also caused injuries to his sons namely, Kewala, Mala, Kistura and Rama but he could not name the accused because he became unconscious and re-gained conscious after about half an hour. His son Teekma brought a bullock cart and took them to the hospital.

Similar were the statements of P.W. 7 Kistura, P.W. 8 Mala and P.W. 21 Rama not only with regard to the weapon of offences but also the injuries assigned to the witnesses.

P.W. 13 Dr.Ranjeet Mal Jain has stated that he had prepared the X-ray report of injured Mahadeva and Mala Ram. X- ray plates of Mahadeva were Ex.P/19 to Ex.P/20. He has proved X-ray report Ex.P/22. He also found that the humorous bone of the right hand of injured Mahadeva was also fractured. He has proved X-ray plates of

Malaram which are Ex.P/23 and P/24.

P.W. 23 Dr.Rajendra Singh has proved injuries of Pratapa as also the post mortem report which has been exhibited as Ex.P/62. Pratapa had sustained five injuries respectively on left shoulder, lower limb of his right leg, middle limb of his right leg, right temporal region of his head and left temporal region of his head. On post mortem, his scalp was found to have been fractured in size of 5.0 x 2.5 c.m. on the right temporal region whereas there was a fissured fracture from right temporal region and encircled the anterior on upper side upto the left temporal bone and 22 c.ms. in length. He attributed the reason for this fracture collectively to injuries nos. 4 and 5 which was in the size of 5'x 3' on the left temporal region of his head. He has also proved eight injuries on the person of Mala Ram vide Ex.P/63. Injury no. 1 size of which was 5.0x 0.5 c.m. and was bone deep on the occipital region on his head whereas injury no. 8 again was in the size of 4.0 x 3.0 c.m. on the left side of his head. Other injuries were on his legs, thighs and back. He has also proved that Mahadeva, aged about 70 years had sustained seven injuries. He has also proved the injuries on the person of Kistura who had sustained eight injuries on different parts of his body. They were all shown to have been caused by blunt weapons and were simple in nature. His injury report has been proved as Ex.P/65. He has also proved the injuries on the person of Kewala. He received as many as ten injuries from blunt weapons which was simple in nature. His injury report is Ex.P/66. He has also proved the injuries on the person of accused Rama vide injury report Ex.P/67. In the cross-examination, he has categorically stated that injuries no. 4 and 5

sustained by deceased Pratapa were serious in nature and were in the ordinary course of nature to cause his death. He has also proved one simple injury on the person of accused Kachra caused by a blunt weapon, one simple injury on the accused Jetha caused by blunt weapon; two injuries on the persons of Gulab Bharti both caused by blunt weapon and simple in nature, four injuries on the person of Peera caused by blunt weapon and simple in nature. Analysis of the entire evidence on record proves that all accused persons were members of an unlawful assembly and committed the offences for which they were ultimately convicted and sentenced as members of such unlawful assembly. Apart from convicting the accused u/ss. 447,147 , 325/149,323/149 and 302 IPC, the learned trial Court has rightly convicted other accused persons with the aid of Section 149 because all these offences were committed by them as members of unlawful assembly in prosecution of the common object of that assembly or at least as the members of that assembly they knew that such offence were likely to be committed in prosecution of that object and therefore every member of such assembly is vicariously responsible for the offence committed by other members of that assembly. Although where the prosecution is able to prove membership of the unlawful assembly, it is not necessary for it to further prove specific overt act assigned to each accused, in the present case however number of prosecution witnesses have assigned one or the other overt act to each of the accused.

In my view therefore, the learned trial Court has not committed any error in convicting and sentencing the accused appellants

under the impugned judgment. As a result of the aforesaid discussion, the present appeal fails and is hereby dismissed. Consequences to follow.

(MOHAMMAD RAFIQ),J.